

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>90-10397</u>
KEVIN G. STALEY)	
)	
Debtor)	
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)	FILED
KEVIN G. STALEY)	at 3 O'clock & 30 min. P.M.
)	Date: 10-19-90
Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>90-1033</u>
GENERAL MOTORS ACCEPTANCE)	
CORPORATION)	
)	
Defendant)	

ORDER

By motion, General Motors Acceptance Corporation (GMAC), the defendant in the above referenced adversary proceeding and listed creditor in the underlying Chapter 13 bankruptcy proceeding seeks dismissal of the adversary and the Chapter 13 proceeding pursuant to 28 U.S.C. §1408 based upon improper venue. Based upon the evidence presented at hearing and briefs submitted by counsel, this court makes the following findings of fact and conclusions of law.

This is not the debtor's first Chapter 13 proceeding. By order dated October 13, 1988 this court confirmed a previous Chapter 13 case, In re: Kevin G. Staley, Chapter 13 Case No. 188-00632. In the previous Chapter 13 case GMAC was the holder of an allowed secured claim in the amount of Fifteen Thousand One Hundred Forty Eight and 80/100 (\$15,148.80) Dollars. The claim was secured by a 1988

Pontiac Grand Am automobile. By order dated July 31, 1989 this court granted the motion of GMAC for relief from the automatic stay of 11 U.S.C. §362(a) authorizing GMAC to exercise its rights and remedies under applicable state law against the aforementioned collateral. Following the granting of relief from stay, the Chapter 13 trustee reported the case paid in full and a discharge was entered February 9, 1990.

On March 7, 1990 the debtor filed this second Chapter 13 proceeding, In re: Kevin G. Staley Chapter 13 Case No. 90-10397. In the debtor's current Chapter 13 petition he lists his residence as 1011 River Ridge Road, Apartment 21C, Augusta, Georgia 30909. On March 10, 1990 GMAC repossessed the automobile by self-help. Following repossession, the debtor instituted the adversary proceeding seeking turnover of the automobile as well as an award of compensatory and punitive damages including attorneys fees and costs for violation of the §362(a) stay.

The debtor is a nurse licensed in the State of South Carolina. For more than six months prior to the filing of the

current Chapter 13 proceeding the debtor worked and lived at various duty assignments in the State of South Carolina. Between assignments the debtor resided with either his parents; or his spouse's parents in South Carolina. For the taxable year 1989 the debtor filed a South Carolina State income tax return. The debtor did not file a Georgia State income tax return. At filing and during the six (6) months prior to the filing of this case, the debtor had in his possession his clothing which he values in his schedules at Five Hundred and No/100 (\$500.00) Dollars and the 1988 Pontiac Grand Am automobile which he values at Five Thousand Eight Hundred Fifty and No/100 (\$5,850.00) Dollars. The balance of the debtor's personal property valued at Two Thousand Nine Hundred and No/100 (\$2,900.00) Dollars was stored with a friend in Georgia.

Section 1408 of Title 28 United States Code provides in pertinent part:

A case under Title 11 may be commenced in the district court for the district

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180 day period, than the domicile, residence, or principal place of business in the United States, or principal assets in the United States if such person were located in any other district . . .

In order for proper venue for this Chapter 13 proceeding to rest in the Southern District of Georgia the debtor must establish that for the 180 days immediately preceding the filing of this case or the greater portion thereof either

(1) the debtor was a domiciliary or resident of the Southern District of Georgia or

(2) the debtor's principal place of business was within the Southern District of Georgia; or

(3) the debtor's principal assets were within the Southern District of Georgia.

From the facts presented during the 180 days immediately preceding the filing of this case the debtor was a resident and domiciliary of the State of South Carolina. The debtor conducted his business in the State of South Carolina and his principal asset, his automobile was in his possession in the State of South Carolina. Contrary to the position taken by the debtor, the term asset as used in 1408 is not synonymous with equity. Asset is defined as "[t]he the property or affects of a bankrupt or insolvent, applicable to the payment of his creditors." Black's Law Dictionary: assets (bankruptcy) p. 108 (5th Ed. 1979). Although the amount claimed due GMAC far exceeded the claimed value of the automobile, the automobile is an asset of the debtor which could be utilized for the satisfaction of debt. In fact, GMAC has repossessed the automobile in order to use the collateral at least partially to

satisfy its debt.

Under each criteria of §1408, the proper venue for this adversary proceeding and the underlying Chapter 13 case rests in the District of South Carolina. Pursuant to 28 U.S.C. §1412, "[a] district court may transfer a case or a proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties" (emphasis added). In this case, the interest of justice support the transfer of this Chapter 13 case and adversary proceeding to the District of South Carolina.

It is therefore the report and recommendation of this court that the United States District Court for the Southern District of Georgia order the Chapter 13 case In re: Kevin G. Staley, Chapter 13 case No. 90-10397 and adversary proceeding Kevin G. Staley v. General Motors Acceptance Corporation (In re: Staley) Adversary Proceeding No. 90-1033 transferred to the United States District Court for the District of South Carolina for appropriate disposition.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 18th day of October, 1990.